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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,255	08/31/2001	Nobuhiro Funasako	1872/OJ700	1960
7278	7590	03/04/2004	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 09/945,255	<b>Applicant(s)</b> FUNASAKO ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,8 and 9 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☒ All    b) ☐ Some \*    c) ☐ None of:
    - 1. ☒ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed November 23, 2003, has been entered. Claims 1-5 have been cancelled. Claims 6-8 have been amended and new claim 9 has been added as requested. Thus, the pending claims are 6-9.

The amendment to the claims is sufficient to withdraw the 112, 2<sup>nd</sup> rejections set forth in sections 6-9 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 6, 8, and 9 are rejected under 35 USC 103(a) as being unpatentable over JP 02-111372 issued to Fikushima et al. in view of Applicant's own admission and in further view of US 4,658,739 issued to Watkins and US 4,841,889 issued to Watkins.

Fikushima teaches a primary backing for a tufted carpet comprising a woven fabric wherein either the warp or weft yarns comprises multi-stratum (i.e., bicomponent) fibers (abstract). The bicomponent fibers are flat yarns of a high melting point resin which are coated with a low melting point resin. The primary backing is stabilized by thermally adhering the bicomponent fibers to each other and at the intersection with other yarns.

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Fikushima teaches the presently claimed invention with the exception of (a) that each of said warps/wefts being comprised of a plurality of filaments (i.e., multifilaments) and (b) the claimed pile pattern. However, Applicant's own admission states a known alternative to flat yarn (i.e., monofilament, tape yarn) backing fabrics is a polyester multifilament yarn backing fabrics (specification, page 2, lines 6-10). Thus, it would have been obvious to one skilled in the art to employ multifilament yarns for the monofilament yarns of Fikushima with the expectation of increased flexibility and tensile strength.

With respect to the claimed pile pattern, said pattern is also known in the art. For example, Watkins '739 teaches an apparatus for tufting a carpet comprising a staggered needle tufting machine (abstract). Additionally, Watkins '886 teaches an apparatus for tufting a carpet having the pattern shown in Figure 9 (col. 7, lines 8-17). Thus, it would have been obvious to one of ordinary skill in the art to employ the tuft pattern of Watkins in the tufted carpet of Fikushima with the expectation of producing a dimensionally stable and decorative carpet.

With respect to the claimed needle gauge ranges, it would have been obvious to one of ordinary skill in the art to select the claimed ranges, based upon the desired tuft density and pattern. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215.

With respect to the claimed yarn denier (dtex), it is asserted that this limitation is obvious over the prior art. Specifically, the claimed denier range is well known in the art of carpet. Applicant is hereby given Official Notice of this fact. Thus, it would have been obvious to one of ordinary skill in the art to select the claimed denier in order to produce a quality carpet pile. Therefore, claims 6 and 8 are rejected as being obvious over the cited prior art.

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***Allowable Subject Matter***

4. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach or fairly suggest a tufted carpet having the claimed primary backing, claimed arrangement of first and second piles, and the claimed spacing of the two to five weft threads.


***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj  
February 23, 2004

  
CHERYL A. JUSKA  
PRIMARY EXAMINER